

1 TRACY L. WILKISON
Acting United States Attorney
2 SCOTT M. GARRINGER/CHRISTOPHER D. GRIGG
Assistant United States Attorneys
3 Chiefs, Criminal and National Security Divisions
KAREN I. MEYER (Cal. Bar No. 220554)
4 DEVON MYERS (Cal. Bar No. 240031)
Assistant United States Attorneys
5 Violent & Organized Crime/Cyber & IP Crimes Sections
1300/1500 United States Courthouse
6 312 North Spring Street
Los Angeles, California 90012
7 Telephone: (213) 894-8559/0649
Facsimile: (213) 894-2927
8 E-mail: kim.meyer@usdoj.gov
devon.myers@usdoj.gov
9

10 LAUREN S. KUPERSMITH
KYLE P. REYNOLDS
Trial Attorneys
11 U.S. Dept. of Justice, Criminal Division
Child Exploitation and Obscenity Section
12 1301 New York Avenue, NW
Washington DC 20005
13 Telephone: (202) 514-1564
Facsimile: (202) 514-1793
14 E-mail: lauren.kupersmith@usdoj.gov
Kyle.reynolds@usdoj.gov
15

Attorneys for Plaintiff
16 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 v.

22 ARLAN WESLEY HARRELL, et al.,

23 Defendants.
24

No. CR 17-404(B)-AB-2

GOVERNMENT'S MEMORANDUM IN AID OF
DEFENDANT JOHN BRINSON, JR.'S
CHANGE OF PLEA

25 Plaintiff United States of America, by and through its attorneys
26 of record, the United States Attorney's Office for the Central
27 District of California and Assistant United States Attorneys Devon
28

1 Myers and Karen I. Meyer and Department of Justice Trial Attorneys
2 Lauren Kupersmith and Kyle P. Reynolds, hereby submits this
3 memorandum in aid of defendant JOHN BRINSON JR.'S ("defendant") Rule
4 11 plea. At the change of plea hearing set for June 21, 2021, it is
5 the government's understanding that defendant intends to plead guilty
6 to all of the charges in which he is named in the Second Superseding
7 Indictment, without a plea agreement. The government hereby files a
8 brief statement regarding the elements, penalties, and facts
9 supporting those counts in which defendant is named: Counts One, and
10 Counts Three through Six.

11
12 Dated: June 18, 2021

Respectfully submitted,

13 TRACY L. WILKISON
14 Acting United States Attorney

15 SCOTT GARRINGER/CHRISTOPHER D. GRIGG
16 Assistant United States Attorneys
17 Chiefs, Criminal/National Security
18 Divisions

19 /S/
20 DEVON MYERS
21 KAREN I. MEYER
22 Assistant United States Attorneys

23 Attorneys for Plaintiff
24 UNITED STATES OF AMERICA
25
26
27
28

MEMORANDUM**I. INTRODUCTION**

Defendant John Brinson, Jr. ("defendant") has indicated that he intends to plead open to all counts of the Second Superseding Indictment ("SSI") in which he is named. On June 16, 2021, the government sent its proposed factual basis to defense counsel. Shortly thereafter, also on June 16, 2021, defendant lodged with the Court a proposed factual basis, which he had not provided to the government.¹ In reviewing defendant's factual basis, the government noticed that some of the elements of Count One that defendant intends to plead guilty to relate to the First Superseding Indictment ("FSI") and not the operative SSI (explained in further detail below). Further, some of the language does not clearly address the elements of the offenses charged. When government counsel raised this issue with defense counsel, defense counsel responded that he intends to have his client proceed on the factual basis lodged with the Court and will otherwise object.

It is important that defendant enter into a knowing plea connected to the charges against him and not simply adopt the indictment language from the operative charging document or facts which support different charges. See United States v. Rivillas, 243 F.3d 551, *1-2 (9th Cir. 2000) (unpub.) ("Reading the indictment aloud was also inadequate under Rule 11. Although simply reading the indictment may suffice in some cases to inform a defendant of the nature of the charges against him, Rule 11 is not satisfied unless

¹ Additionally, defendant requested that the factual basis be placed under seal, to which the government objected. Defendant also requested that the change of plea hearing be sealed, to which the government also objected.

1 there is evidence on the record that the defendant understands the
2 nature of the charges. . . . Conspiracy is a complex charge, esoteric
3 to an accused, and we have consistently reversed guilty pleas when,
4 as here, the district court failed to explain the nature of a
5 conspiracy charge to the defendant." (internal citations and
6 quotations omitted)); see also United States v. Kramer, 781 F.2d
7 1380, 1384 (9th Cir. 1986) ("in non-complex cases, a reading of the
8 indictment may suffice"). The defendant's factual basis may be
9 insufficient for the Court to ensure the defendant understands the
10 nature of the charges to which he is pleading guilty.

11 Given that this case involves a significant sentencing exposure
12 for defendant, that some of the charges are complex or involve
13 statutory language whose meaning is not always clear on its face, the
14 government proposes the factual basis below. The government's
15 proposed factual basis hews closely to the language of the SSI but
16 also uses more plain language in place of legal terms of art and
17 includes some additional details that the government believes will
18 help the Court be assured that defendant understands the nature of
19 the charges against him.

20 **II. GUILTY PLEA**

21 Defendant is pleading guilty to all counts in the twenty-four
22 count SSI in which he is charged in United States v. Arlan Wesley
23 Harrell, et al., 17-cr-404(B)-AB-2, which are Count One and Counts
24 Three through Six.

25 Count One charges defendant with Child Exploitation Enterprise,
26 in violation of Title 18, United States Code, Section 2252A(g).
27 Counts Three through Six charge defendant with Production of Child
28

1 Pornography, in violation of Title 18, United States Code, Sections
2 2251(a), (e), as well as the alternate theory of aiding and abetting
3 the Production of Child Pornography in violation of Title 18, United
4 States Code, Section 2(a).

5 **III. NATURE OF THE OFFENSE**

6 1. For defendant to be guilty of the crime charged in Count
7 One, that is, Child Exploitation Enterprise, in violation of Title
8 18, United States Code, Section 2252A(g), the following must be true:
9 (1) defendant knowingly produced, advertised, transported,
10 distributed, or received child pornography in violation of Chapter
11 110 of Title 18, United States Code, as part of a series of felony
12 violations constituting three or more separate incidents; (2) the
13 incidents involved more than one victim; and (3) the defendant
14 committed those offenses in concert with three or more other persons.

15 2. For defendant to be guilty of the crime charged in Counts
16 Three through Six, that is, Production of Child Pornography, in
17 violation of Title 18, United States Code, Sections 2251(a), (e), the
18 following must be true: (1) at the time of the offense, the victim
19 was under the age of 18 years; (2) defendant employed, used,
20 persuaded, induced, enticed, or coerced the victim to take part in
21 sexually explicit conduct for the purpose of producing a visual
22 depiction of such conduct; and (3) (a) the visual depiction was
23 actually transported and transmitted using any means or facility of
24 interstate and foreign commerce and in and affecting interstate
25 commerce; or (b) the defendant knew or had reason to know that the
26 visual depiction would be transported or transmitted using any means
27 or facility of interstate or foreign commerce or in or affecting
28

1 interstate commerce; or (c) the visual depiction was produced or
2 transmitted using materials that have been mailed, shipped, or
3 transported in or affecting interstate or foreign commerce by any
4 means, including by computer.

5 3. For defendant to be guilty of Aiding and Abetting the
6 Production of Child Pornography, as charged as an alternative theory
7 in Counts Three through Six, in violation of Title 18, United States
8 Code, Section 2251(a), the following must be true: (1) someone else
9 committed the production of child pornography; (2) defendant aided,
10 counseled, commanded, induced or procured that person with respect to
11 at least one element of the production of child pornography; (3)
12 defendant acted with the intent to facilitate the production of child
13 pornography; and (4) defendant acted before the crime was completed.

14 **IV. PENALTIES**

15 4. The statutory maximum sentence that the Court can impose
16 for a violation of Title 18, United States Code, Section 2252A(g),
17 is: life imprisonment; a lifetime period of supervised release; full
18 restitution to the victims of the offense; a fine of \$250,000 or
19 twice the gross gain or gross loss resulting from the offense,
20 whichever is greatest; and a mandatory special assessment of \$100 and
21 a \$5,000 special assessment pursuant to title 18, United States Code,
22 Section 3014 if the Court determines defendant is non-indigent.

23 5. The statutory maximum sentence that the Court can impose
24 for each violation of Title 18, United States Code, Sections 2251(a),
25 (e), is: 30 years' imprisonment; a lifetime period of supervised
26 release; full restitution to the victims of the offense; a fine of
27 \$250,000 or twice the gross gain or gross loss resulting from the
28

1 offense, whichever is greatest; and a mandatory special assessment of
2 \$100 and a \$5,000 special assessment pursuant to title 18, United
3 States Code, Section 3014 if the Court determines defendant is non-
4 indigent.

5 6. The total maximum sentence for all offenses to which
6 defendant is pleading guilty is: life imprisonment; a lifetime period
7 of supervised release; a fine of \$1,250,000 or twice the gross gain
8 or gross loss resulting from the offenses, whichever is greatest; a
9 mandatory special assessment of \$500 and a trafficking special
10 assessment of \$25,000, if the Court determines that defendant is not
11 indigent.

12 7. The statutory minimum sentence that the Court must impose
13 for a violation of Title 18, United States Code, Section 2252A(g),
14 is: 20 years' imprisonment; five years' supervised release; and a
15 mandatory special assessment of \$100.

16 8. The statutory minimum sentence that the Court must impose
17 for a violation of Title 18, United States Code, Section 2251(a), is:
18 15 years' imprisonment; five years' supervised release; and a
19 mandatory special assessment of \$100.

20 9. Supervised release is a period of time following
21 imprisonment during which defendant will be subject to various
22 restrictions and requirements. Defendant understands that if
23 defendant violates one or more of the conditions of any supervised
24 release imposed, defendant may be returned to prison for all or part
25 of the term of supervised release authorized by statute for the
26 offense that resulted in the term of supervised release.

1 10. By pleading guilty, defendant may be giving up valuable
2 government benefits and valuable civic rights, such as the right to
3 vote, the right to possess a firearm, the right to hold office, and
4 the right to serve on a jury. Once the Court accepts defendant's
5 guilty pleas, it will be a federal felony for defendant to possess a
6 firearm or ammunition. The convictions in this case may also subject
7 defendant to various other collateral consequences, including but not
8 limited to revocation of probation, parole, or supervised release in
9 another case and suspension or revocation of a professional license.
10 Defendant understands that unanticipated collateral consequences will
11 not serve as grounds to withdraw defendant's guilty pleas.

12 11. If defendant is not a United States citizen, the
13 convictions in this case makes it practically inevitable and a
14 virtual certainty that defendant will be removed or deported from the
15 United States. Defendant may also be denied United States
16 citizenship and admission to the United States in the future.
17 Defendant understands that while there may be arguments that
18 defendant can raise in immigration proceedings to avoid or delay
19 removal, removal is presumptively mandatory and a virtual certainty
20 in this case. Removal and immigration consequences are the subject
21 of a separate proceeding and that no one, including his attorney or
22 the Court, can predict to an absolute certainty the effect of his
23 convictions on his immigration status. Defendant nevertheless
24 affirms that he wants to plead guilty regardless of any immigration
25 consequences that his pleas may entail, even if the consequence is
26 automatic removal from the United States.

1 12. As a condition of supervised release, under Title 18,
2 United States Code, Section 3583(d), defendant will be required to
3 register as a sex offender. Independent of supervised release,
4 defendant will be subject to federal and state registration
5 requirements, for a possible maximum term of registration up to and
6 including life. Under Title 18, United States Code, Section 4042(c),
7 notice will be provided to certain law enforcement agencies upon his
8 release from confinement following conviction. The defendant must
9 register and keep the registration current in each jurisdiction in
10 which the defendant resides, is an employee, or is a student.
11 Requirements for registration include providing, among other
12 information, the defendant's true name, residence address, and names
13 and addresses of any places where the defendant is or will be an
14 employee or student. The requirement to keep the registration
15 current includes informing at least one jurisdiction in which the
16 defendant resides, is an employee, or is a student not later than
17 three business days after any change of the defendant's name,
18 residence, employment, or student status. Failure to comply with
19 these obligations subjects the defendant to prosecution for failure
20 to register under federal law, 18 U.S.C. § 2250, which is punishable
21 by a fine or imprisonment, or both.

22 **V. FACTUAL BASIS**

23 13. The United States submits that this statement of facts is
24 sufficient to support pleas of guilty to the charges described in
25 this document, but it is not meant to be a complete recitation of all
26 facts relevant to the underlying criminal conduct or all facts known
27 to either party that relate to that conduct.

1 As to Count 1, BRINSON (a/k/a "king," "iamking," "boyanal," and
2 "devinelover") was a member of "Website A," which was an Internet-
3 based, members-only bulletin board dedicated to the production,
4 advertisement, transportation, receipt, distribution, and possession
5 of child pornography depicting children five years old or younger.
6 BRINSON was a member of Website A and he made posts under the
7 username "king." When BRINSON was a member, Website A had over one
8 thousand members. Its members used screen names to mask their
9 identities, followed security rules regarding remaining anonymous,
10 and needed to use a network that masked each member's Internet
11 Protocol address.

12 Members could make "posts" to Website A that often included
13 child pornography images and videos and links to child pornography.
14 Members could make these posts in different sections of Website A
15 that were dedicated to child pornography depicting children of
16 certain ages and genders. Website A also allowed members to ascend
17 to certain "ranks" based on the extent of that member's participation
18 in Website A, including the amount of child pornography the member
19 shared over the website.

20 BRINSON joined Website A on approximately February 24, 2016, and
21 made approximately 249 posts to other Website A users. Between
22 approximately February 2016 and continuing through approximately June
23 2017, within the Central District of California, and elsewhere,
24 BRINSON, acting in concert with co-defendant, Arlan Harrell and
25 others, engaged in a series of three or more felony violations of
26 advertisement of child pornography in violation of 18 U.S.C.
27 § 2251(d) (1) (A) and distribution of child pornography in violation of
28

1 18 U.S.C. § 2252(a)(2). For example, acting in concert with co-
2 defendant, Arlan Harrell, and other members of Website A, BRINSON
3 made the following posts on Website A:

- 4 • On August 1, 2016, BRINSON made a post thanking Harrell
5 a/k/a "Soole" for a post he made, encouraging others to
6 post more, and thanking the administrators for creating and
7 running the site that contained a 10 images, including
8 images that depicted a closeup of Minor Victim 3's
9 unclothed penis and an image that depicted an adult male
10 penis touching the unclothed buttocks of Minor Victim 3.
11 Minor Victim 3 was approximately six years old at the time
12 of the post.
- 13 • On November 19, 2016, BRINSON made a post that contained
14 three images that depicted Minor Victim 3 laying on his
15 back without clothing and his legs spread with a focus on
16 his genitalia. The post also included links to download
17 the images, along with text thanking the moderators and
18 members of the site. Minor Victim 3 was approximately six
19 years old at the time of the post.
- 20 • On January 25, 2017, BRINSON made a post that included
21 three images of Minor Victim 3, as well as text describing
22 the images and the sexual acts that BRINSON performs on
23 Minor Victim 3. One of the images depicted Minor Victim 3
24 orally copulating BRINSON and another included a closeup of
25 Minor Victim 3's unclothed genitalia. Minor Victim 3 was
26 approximately six years old at the time of the post.

- On June 10, 2017, BRINSON made a post that included a link and a password to a video file that depicted an adult male anally penetrating a toddler. The post was labeled with an explicit description of the video.

As to Count 3 through 5, between approximately September 24, 2016 and May 28, 2017, Harrell and BRINSON, each assisting the other, created images and/or videos of Minor Victims 3, 11, and 12, which depicted the lascivious display of the genitals of Minor Victims 3, 11, and 12, as well as BRINSON and/or Harrell orally copulating, or masturbating or anally penetrating Minor Victims 3, 11, and 12. Each image or video was produced or transmitted using materials that were manufactured outside of California. At all relevant times, Minor Victim 3 was less than eight years old and Minor Victims 11 and 12 were less than four years old.

As to Count 6, between approximately December 19, 2016, and May 28, 2017, BRINSON and Moises Martinez, each assisting the other, created images of Minor Victim 1, including images which depicted the lascivious display of the genitals of Minor Victim 1 and an adult male penis anally penetrating Minor Victim 1. Each image was produced or transmitted using materials that were manufactured outside of California. At all relevant times, Minor Victim 1 was less than ten years old.

All of BRINSON's offenses described above took place in the state of California and in whole or in part within the Central District of California. He took these actions knowingly and deliberately and not by mistake or accident. All of the individuals designated as "Minor Victims" were under the age of 18 at the time of

1 his conduct. This Factual Basis does not recite every fact known to
2 the United States about BRINSON's conduct, and it does not prevent
3 either party from introducing additional facts or evidence at
4 sentencing.

5 **VI. DEFENDANT'S PROPOSED FACTUAL BASIS**

6 Defendant's proposed factual basis is inconsistent with the SSI.
7 For example, in the FSI, in Count One, it charged defendant with
8 Engaging in a Child Exploitation Enterprise, which is the same as
9 Count One in the SSI. In the FSI, Count One, however, it is alleged
10 that defendant made three specific posts on Website A on: (1)
11 February 28, 2016; (2) November 14, 2016; and (3) June 10, 2017.
12 (See FSI, Docket Entry ("DE") No. 21 at p. 8.) The predicate acts
13 for the February 28, 2016 and November 14, 2016 posts were violations
14 of 18 U.S.C. § 2251(a), production of child pornography. The
15 predicate act for the June 10, 2017 post was distribution of child
16 pornography, in violation of 18 U.S.C. § 2252A(a)(2).

17 In contrast, the Second Superseding Indictment ("SSI") Count One
18 alleges that defendant made four specific posts to Website A on: (1)
19 August 1, 2016; (2) November 19, 2016; (3) January 25, 2017; and (4)
20 June 10, 2017. (See SSI, DE 228, at 4.) Importantly, the predicate
21 act for each of these posts is alleged as both distribution of child
22 pornography, in violation of 18 U.S.C. § 2252(a)(2), or advertisement
23 of child pornography, in violation of 18 U.S.C. § 2251(d)(1)(A).
24 (Id. at 3-4.)

25 Defendant's proposed factual basis has defendant admitting to
26 the predicate acts of distribution of child pornography in violation
27 of 18 U.S.C. § 2252A(a)(2) - which is a different statute than
28

1 alleged in the SSI - and production of child pornography in violation
2 of 18 U.S.C. § 2251(a) - which is not specified in Count 1 of the SSI.
3 (See Defendant's proposed factual basis at 4.) The dates that
4 defendant references for his posts are: (1) November 19, 2016; (2)
5 October 20, 2016; and (3) January 25, 2017. (Id. at 4-5) While
6 November 19, 2016 and January 25, 2017 are dates in the SSI,
7 defendant references different felony violations. It is unclear from
8 where the October 20, 2016 date originates. As such, the government
9 submits that the Court should adopt the Factual Basis provided herein
10 for Count One.

11 Regarding Counts Three through Six, that charge production of
12 child pornography, in violation of 18 U.S.C. § 2251(a), defendant
13 connects his production of child pornography of victims 3 and 12 to
14 his postings on Website A. While it is true that defendant sometimes
15 used these children in his posts, the production charges in the SSI
16 encompass acts that are not connected to Website A and the SSI does
17 not use production of child pornography as predicate acts to the
18 Enterprise Count. Further, defendant's factual basis uses a number
19 of legal terms of art that should be clarified and imprecisely
20 summarizes some of the elements of the offense committed by
21 defendant. Consequently, the government submits that the Court
22 should use its proposed factual basis and make any necessary inquiry
23 of defendant to ensure that he understands the nature of each charge
24 to which he is pleading, pursuant to Fed. R. Crim. P. 11(b)(1)(G).

25 **VII. WAIVER OF CONSTITUTIONAL RIGHTS**

26 14. By pleading guilty, defendant gives up the following
27 rights:
28

1 a. The right to persist in a plea of not guilty.

2 b. The right to a speedy and public trial by jury.

3 c. The right to be represented by counsel - and if
4 necessary have the Court appoint counsel - at trial. Defendant
5 understands, however, that, defendant retains the right to be
6 represented by counsel - and if necessary have the Court appoint
7 counsel - at every other stage of the proceeding.

8 d. The right to be presumed innocent and to have the
9 burden of proof placed on the government to prove defendant guilty
10 beyond a reasonable doubt.

11 e. The right to confront and cross-examine witnesses
12 against defendant.

13 f. The right to testify and to present evidence in
14 opposition to the charges, including the right to compel the
15 attendance of witnesses to testify.

16 g. The right not to be compelled to testify, and, if
17 defendant chose not to testify or present evidence, to have that
18 choice not be used against defendant.

19 h. Any and all rights to pursue any affirmative defenses,
20 Fourth Amendment or Fifth Amendment claims, and other pretrial
21 motions that have been filed or could be filed.